SPEECH OF THE HON. WM. A. GRAHAM...
ON THE AMENDMENT OF THE CONSTITUTION...
DEC. 12, 1854

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HON. WILLIAM A. GRAHAM,
OF ORANGE,
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IN THE SENATE,

December 12th, 1854.

[The Senate having under consideration the bill introduced by Mr. BOYD, of Rockingham, "to amend the Constitution of North Carolina," Mr. Graham moved to amend by striking out all after the words "A Bill," and inserting the provisions of a bill introduced by himself "concerning a Convention to amend the Constitution of the State," and said:]

MR. SPEAKER:—It will be readily perceived that the difference between the two measures is, that the bill of the Senator from Rockingham proposes to take the initiatory step for a single amendment of the Constitution, te wit: the annulment of the freehold qualification, now required in voters for the Senate, and after filtrating this proposition through two successive Legislatures, by the necessary majorities of three-fifths and two-thirds, to carry it before the tribunal of the popular vote for adoption or refusal, without allowing to the people, whose approbation is asked for it as an *isolated amendment*, any power of deliberation or change in other parts of the instrument; but, on the contrary, carefully excluding them therefrom with an evident distrust in the wisdom or justice of their decision on the *Constitution in general;* while I propose to go at once to the people with the question, whether they desire a Convention to amend the Constitution, in this, or any other particular, and, in the

event of the expression of their will in the affirmative, that by their *fiat*, a Convention shall be assembled, without unnecessary delay, and, upon review of the Constitution *as a whole*, shall consider and propose such amendments as may be deemed by it to be required in the present condition of the State, and provide, by proper ordinances, for submitting them to the suffrages of the people, for ratification or rejection.

I need not remark that, in either aspect, the subject is one of the first magnitude that can employ the deliberations of the Legislature. I regret that it is difficult to discuss it without being, to some extent, tedious and pains-taking; and yet, in my belief, discussion is necessary to its proper comprehension. If I might be permitted to borrow the language of a certain critic, in relation to the works of a great orator of antiquity, and apply it to this topic, in the view presented by the original bill, I would say, with entire respect to all concerned, that it has been "more talked about than considered, and considered than understood."

Having been a member of the General Assembly of 1834-'5, which enacted the law providing for the ascertainment of the sense of the people in regard to a Convention, for Constitutional Amendment in that day, by virtue of which they called into existence the Convention which assembled in the latter year, and having given my assent rather than approval to the adjustment of the long pending contest for reform in the Constitution of the State then made, I am frank to confess that I should not thus early have proposed a new revision of the Constitution, but for the agitation for change in the fundamental law which has been waged for the last half a dozen years. When Mr. Jefferson, in certain disquisitions on Government, many years since, advanced the idea that a Constitution should endure but for the generation of men who formed it; that the average duration of the life of man was eighteen years, after attaining the age of majority at twenty-one; that this period should, therefore, be reckoned a political generation, and

that no Constitution should last longer than one such generation without the assent of that which succeeded it; the opinion was thought to be a bold speculation, which, if carried out practically, might lead to inconvenient, if not hazardous results. But, sir, in less than three such generations since the annunciation of this doctrine, it has become a familiar dogma, that there is no sacredness in Constitutions, by reason of which they are to endure longer than those who have the power to change think proper to permit; and, if not in other States, certainly in this, the opinion seems to be entertained and is acted upon, in this original bill, that no circumstances of compromise or mutual concession, which entered into the settlement of a vexed and excited contest for Constitutional reform, are to be respected by those to whom change is desirable.

After a struggle of more than thirty years, in regard to alterations in the provisions of their Constitution, the people of North Carolina came to an adjustment, which was effected through the agency of the Convention of 1835, and the ratification of its proceedings by the vote of the people, and which was, in the main, satisfactory to all parties and sections. Or, if dissatisfaction still existed, it was suppressed, and the Constitution, as then amended, was acquiesced in as a compromise of conflicting interests of sections and individuals. But, in far less than eighteen years, agitation commenced for amending the Constitution as amended, for setting at naught the compromise of 1835, as I shall presently demonstrate, accompanied by invectives against one, at least, of its provisions, hardly consistent with the respect which all entertain for the men of 1776, who framed the Constitution of that date, and bequeathed it to us an inheritance bought by their blood, or for our contemporaries or most recent predecessors in 1835, who were guilty of "knowingly and wittingly" retaining what their Revolutionary Fathers are supposed, most unjustly and without proper knowledge of or regard for popular rights, to have adopted. This agitation is said not to have been without its effects upon

the minds of the people. Indeed, those who affect to speak in their name and proclaim their voice, allege that a determination in favor of the amendment proposed in the bill which I offer to amend, has been indicated by the result of recent elections. Knowing something of the great variety of considerations which enter into and influence elections of members of the Legislature, as well as Governor of the State, I do not undertake to affirm or deny that this is so. But I prefer to let the people speak for themselves on the great question of amending the Constitution, when no other influences are at work, and therefore I offer the amendment before you. If they desire the amendment contained in the original bill, and this only, we shall get it, and no more. If they desire other changes, why shall they not be made? You claim this upon the ground that they have willed it; upon what ground can you deny them the liberty of expressing their will upon the entire Constitution, and of carrying it into effect when expressed?

Sir, during a considerable part of the time of the discussion, to which allusion has been made, I was upon another theatre of action, unconnected with State politics, and being satisfied that according to the mode proposed of amending the Constitution, by successive legislative enactments, followed by a popular vote, there would be ample time for deliberation on the changes in question, long before they should require my action, as a citizen, at the polls, I have, until within a recent period, given to the whole subject but a casual consideration. In turning my thoughts to it now, I perceive very decisive objections to any important changes in the Constitution, by what is familiarly called the Legislative method. To say nothing of mingling questions of fundamental law, which is a law to the governing power itself, with the ordinary motives which affect elections, such as personal likes or dislikes, questions of local or general improvement, or other local or general policy,—above all, with the ascendancy of party,—and the dispensation of office and patronage, under the State or the Gen-

eral Government, it takes the Constitution in detached portions, and carries these only before the judgment of the people, demanding a peremptory "yes or no" to the particular proposition submitted, without the liberty of modifying it in other particulars, however connected with or dependent upon that proposed to be amended. It may answer conveniently enough for adding to a Constitution provisions independent of those it already contains, or for regulating the exercise of powers already conferred; as in the case of the adoption of Mr. Madison's ten amendments to the Constitution of the U. States, which is in the nature of a bill of rights appended, instead of being prefixed thereto. But when essential changes, in the structure of the Government, are to be made, it is necessary to a just and intelligent exercise of the power to change, that those who are to effect them shall have the liberty of examining into and acting upon more than a single provision of the Constitution. A Constitution of Government, for a free people, is a complicated machine, like a steam engine, or the human frame. It consists of various parts, adjusted in one harmonious whole. It not only calls into existence, and prescribes the mode of their organization, distinct departments of Government, which it considers, in some degree, rival departments, but it undertakes to provide guards and securities for all the great interests of society, and establish maxims of justice and liberty and domestic convenience, which shall not be violated by any of the Departments of Government, or all of them combined. In other and more familiar language, it is a system of checks and balances, one article of which would not have been inserted without another, on kindred subjects, and one of which cannot be removed, without carrying with it others, or deranging and destroying the balance of the whole.

Sir, of this we need no more striking illustration than that offered by the amendment proposed by the bill of the Senator from Rockingham, to establish what is popularly called "Free Suffrage." And here, to prevent misconception and misrepresention, I desire to say, at once, that I have no objection to extending the right of suffrage, so that every man

may vote in the Senate, who now has the right to vote in the House of Commons, provided the Constitution be readjusted in other parts to suit the change thus made. But your system is built upon the freehold qualification in electors for the Senate, as upon a foundation stone. Taking for granted that that was to remain, other important provisions were engrafted into the Constitution, which would have found no place there, but for it to support them. Before, therefore, you prize out this part of the foundation of your edifice, it may be well to examine the condition in which it will be left after the operation has been performed. This will require some examination of the causes of the introduction of this feature into the Constitution, by our fathers, and its retention until now.

Previously to this examination, however, permit me to remark upon the somewhat extraordinary course of argument by which this change has been urged upon the people for their approbation. In the act of the Legislature proposing it, four years ago, and which, after being gazetted for *six* months, was rejected at the last session, by the opposition of Mr. Speaker EDWARDS, there is the following preamble: "Whereas, the freehold qualification now required for electors of members of the Senate conflicts with the fundamental principles of liberty, therefore, be it enacted," &c. The fundamental principles of liberty. Why sir, is liberty the only element in the constitution of Government of a free people? In the sense in which these terms are here used, they mean any inequality in political power, no matter in what policy founded, is contrary to the fundamental principles of liberty, and in that sense it is rather a a French than an American idea. In France, whenever, in the mutations of affairs, the Government professes to be republican, we hear of "liberty, fraternity, equality." I need not say what has followed their last proclamation of those captivating principles. First, a President for three years, with a free Constitution; next a President for ten years, with power to form a Constitution, and then an Emperor for life, with authority to appoint his successor, and no Consti-

tution; all the while there has been perfect equality in the right to vote, and millions against only a few hundred thousand did vote for these successive changes. And yet, according to the logic of this preamble, the fundamental principles of liberty are quite well preserved in France, for every man has his equal right in voting, but they have always been violated in North Carolina. The American theory of Government is not quite so sublimated. While it guards liberty with unceasing vigilance, it looks to other elements necessary to be united with it in any frame of Government, worthy to be called free. In that Constitution, proposed by Washington and his compeers, and adopted by the people of the United States, in 1787, what do they say? "We, the people of the United States, in order, &c., *to establish* justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity, do "ordain and establish this Constitution," &c. And the provisions of every State Constitution, in this Union, show a like regard for justice, domestic tranquility, and the promotion of the general welfare, as for any theoretical idea of the blessings of liberty. Why, sir, how can you justify in the sight of these devotees of liberty, which in their sense, means equality, those other regulations of the Constitution, which apportion political power, in this branch of the Legislature, according to the taxes paid in districts, and in the other, according to black, as well as white population, every five negroes counting as three white men, which render ineligible to the office of Governor, or to a seat in either House of the General Assembly, any man who has not a freehold interest of greater or less quantity or value in land, as well as others equally in conflict with their notions of the fundamental principles of liberty? When this course of reasoning shall have had its full effect, what parts of your Constitution will remain, and how much of that liberty, which it is so anxious to guard, will be preserved to the people?

Again: In the Executive message, recently communicated to the Legislature, it is said that the time will come

when it will be a matter of "profound astonishment," that this requirement of a freehhold qualifieation in voters for the Senate ever had a plaee in the Constitution; that it is founded on the supposition "that the people are politieally corrupt," and that fifty acres of land endows its owner with knowledge, virtue, or patriotism, for the exercise of the eleetive franchise. Now, sir, all this is so complete a perversion of the object and design of the provision in question, and so gross a refleetion upon the framers of the Constitution, to whom we are indebted for so much of liberty as we have enjoyed since throwing off the dominion of the British erown, as well as upon the people of the State, who re-adopted this obnoxious qualification in 1835, that we have far more reason to be astonished at finding such remarks in an Executive communication to the Legislature, than its author has at the requirement of the Constitution.—Whether this requirement be right or wrong, a moderate aequaintanee with the history of the Country and the Constitution will remove all ground for astonishment of the kind antieipated, and relieve our aneestors from the unjust imputation of having devised and transmitted to us a Constitution whieh implies that the people are "politieally corrupt," and the absurdity of having supposed that the possession of land rendered a man a wiser or a better eitizen.

Sir, it is a fact of history, too well known to require repetition, that the provision of the Constitution, requiring this House of the Legislature to be eleeted by owners of property in land, was intended to be defensive in its nature, and to cheek the hand of taxation on property by mere numbers. It implied no qualities, moral or intelleetual, in the landholder superior to him who was landless, but was designed as a protection against the imposition of unjust burthens in supporting government by those not having a common interest. Our aneestors, who gave us the Constitution of 1776, and went through a struggle of seven years of fire and blood to maintain it, were not more remarkable for their love of liberty than a jealousy amounting to a dread

of taxation. Not to recur to the the times of King John or the first Charles, they had in vivid recollection the Stamp Act and the Tea Tax, and the occasion for forming a Constitution arose out of the fact that they had gone to war with Britain upon the question of taxation without representation. They were unwilling that a Parliament, elected by their fellow subjects in the mother country, should impose taxes on them, and resisted to a death struggle. The Colossus of English literature in that day, Dr. Johnson, it is true, undertook to prove to them, in an elaborate pamphlet, that "taxation was no tyranny," but without success. They would not believe him. And when they came to regulate this important power of taxation among their fellow-citizens at home, what did they do? In the bill of rights they declared, "that the people of this State ought not to be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in General Assembly freely given." What kind of General Assembly is here meant? The same Constitution, of which this bill of rights is but a part, informs us. It was a General Assembly, composed of a Senate chosen by freeholders, and a House of Commons chosen by freemen. Such was the origin of this requirement of the Constitution. You may call it, if you please, unequal and unjust, but its end and aim was to protect men in the fruits of their industry, or in their acquisitions from the industry of their ancestors, against exactions for government, imposed by those who are not liable to the same species of taxation.

Sir, I have said that our Fathers were distinguished not more by a love of liberty than a jealousy against taxation. Indeed, according to their ideas, no system of liberty was complete that did not give security to property by Constitutional guarantees. I proceed now to show that this characteristic descended to their posterity, at least as far down as 1835, when, although the Constitution underwent extensive modifications, this protection to landed property against taxes, unless imposed with the consent of landholders through their representatives in one branch of the General Assembly, was

carefully retained and another great subject of property was taken under the protection of the Constitution against taxation at the will of the Legislature. Yes, sir, in the call of that Convention, three things were stipulated for as fundamental articles, namely: 1st. The reduction of the Senate to not less than thirty-four, nor more than fifty members, to be elected by districts, to be laid off according to taxation; 2nd. The reduction of the House of Commons to not less than ninety nor more than one hundred and twenty members, to be elected by counties according to federal population; and the 3rd was what? To provide "that *persons voting for a Senator*, and eligible to the Senate, should possess the same residence and *freehold qualification* in the Senatorial district as is now required in the county." There were other subjects over which the Convention had a discretion, and on which they might devise amendments according to their pleasure; but in these three there was no discretion. The commands of the people who called that Convention into being were imperative. Look to the Convention act of 1835, and you will see the duty prescribed of retaining the freehold qualification as a cardinal principle. Look to the constitution of 1835, and you will see the duty performed and sanctioned by the people. And does it not appear to you, Mr. Speaker, a little strange, that a provision of the Constitution, which the people themselves so recently reviewed, and required every member of the Convention to swear on oath, before taking his seat, that he would prescribe anew to suit the new arrangement by districts, should so soon be voted by majorities of two successive Legislatures to be contrary to the fundamental principles of liberty, and be denounced in the Message of the Executive, as founded in the supposition that the people are "politically corrupt," and the absurdity that the possession of land gives wisdom and virtue? This is accusing the people themselves, as late as 1835, with being ignorant of the "fundamental principles of liberty," and of holding themselves to be "politically corrupt," and guilty of the absurdity just

mentioned. Such is the extravagance and folly to which the public mind and the mind of the people has been treated on the grave topic of amending the Constitution.

Sir, to the most casual reader of the Act of 1835, it is perfectly manifest that the retention of the freehold qualification in electors of the Senate was as well defined, and secured an object in the adjustment, then made, as taxation for the basis of representation in the Senate, and federal population of representation in the House, and a much better secured object, than any other provision of the amended Constitution, save these two. And, as that adjustment was a compromise of a contention of thirty years, literally a treaty of peace, the parties to it, and all others, will be exonerated from its further observance so soon as this one of its fundamental articles has been abandoned and annulled. I wish this to be known and remembered by those who have such dreadful apprehensions from the call of a Convention, and whatever changes the Constitution may be destined to undergo, that we may hear no complaint of a breach of plighted faith, and a departure from the terms of compromise. This original bill sets the compromise at naught, and leaves every man to take part in regard to amendments of the Constitution, as may seem right in his own eyes. Sir, there is no escape from this conclusion. You propose, by this bill, a plain and palpable violation of the compromise of 1835, and yet you evince a very salutary fear of losing the benefits of that compromise in other particulars. If there be, as you, I think, vainly apprehend, a serious or general disposition to disturb the basis of representation, you will have lost more than half your power of resistance to it, when you have broken the faith "which binds the moral elements of the world together."

But, the change in the Constitution proposed by this original bill is not only a violation of the compromise, but if it be made, and nothing more be done, it will destroy the balance between conflicting interests then established, and will be an act of gross injustice to the owners of landed pro

perty, as contradistinguished from the owners of property in slaves. This may not be obvious at first sight, but I think it can be made perfectly apparent. We have already seen that a Constitution of a free government is like the human system, compounded of various parts, harmonized in one whole; and that such is the union of these parts with each other, that one cannot be disturbed without affecting others. It might be supposed by a superficial observer, that, the human hand would be improved by cutting off the fingers of equal lengths, and the operation would be so simple that any child who could handle an axe could perform it.—And yet we know that this curtailment of the extremity would wound nerves and blood vessels connecting with the brain and the heart, the very vitals of the system. So this apparently simple lopping off from the Constitution of the State, what is represented as a mere excrescence, under the captivating idea of a political right, would, from the connections and dependancies of this provision, produce effects reaching far beyond a mere question of equality in voting in which aspect alone, it is treated by the Executive, and has usually been considered by the public. I have already demonstrated that the freehold qualification required in the electors of this body was the landholder's defence against unequal taxation on his property, that for this purpose, it was ordained by our fathers in the first Constitution, that for the same purpose it was revised and re-ordained by their children in 1835, and that the compromise Constitution then given to us was in other of its parts built upon this provision as upon a foundation stone. Being a member of the Legislature, both in 1833 and 1834, and taking an humble part among the advocates for a Convention, I recollect something of the history of that Convention act, and of the negotiations by which a sufficient number of votes was given to the bill to allow the question to be determined by the people. Not only was it required that this qualification in Senatorial voters should be retained as a protection to landed property, but it was also required and conceded that the Convention should have power to make the capitation tax on

slaves and white polls equal throughout the State; and it was morally certain, from the manner in which the Convention was constituted, that it would be done; and it was done to the fullest extent of the power conferred. Sir, the language of Eastern gentlemen, addressed to their Western brethren, was substantially this: "Your property consists for the greater part in land. That is protected against unjust levies by the power of the landholder to elect the Senate: that power we all agree is to be retained. But we own the larger portion of the slaves. Give us a constitutional guarantee against undue taxes upon slaves, and other matters being arranged satisfactorily, we will go into Convention, and give you equal representation." This was agreed to. The Convention was called. It ordained that slaves, under twelve and over fifty years of age, should not be taxed at all; and those between those ages should be only subject to such poll tax as should be laid on white men.— Thus, one half in number of all the slaves in the State is exempted by the Constitution from taxation altogether; and the other half is exempted from all tax, as property, but is liable only to the capitation tax imposed on white men. Thus, the two great subjects of property in the State, lands and slaves, were placed under the protection of the Constitution, against unreasonable exactions by the Legislature— the lands retaining their old defence, by means of a political power, in the hands of their owners, which enables them to have a veto on legislation in one House of the General Assembly; the slaves having a still more effectual shield; not by means of a political power in the owner, but by positive interdict upon the Legislature from laying its finger upon the one half of them for any levies for the support of Government, and upon the other half, only so heavily, or so lightly as it lays it upon the white man with a vote in his hand.— And, now, sir, you propose by this "Free Suffrage" bill, to take from the landholder the protection which he has had from the foundation of the Government, and by reason of the retention of which, protection was given to the slave-

holder in 1835, and to permit the protection then, for the first time, allowed to the slaveholder to remain. This looks to me very much like taking out the foundation, and expecting the superstructure to remain, poised in mid air—very much like taking out a balance wheel from a complex machine, and expecting it to run on, as if never disturbed.—Does any one doubt for a moment, that, if the protection to land had not been continued in 1835, the guarantee in favor of slaves would never have been adopted? I was continuously a member of the General Assembly, from the ratification of the amended constitution, until 1840; and I am very sure, that after the compromise of 1835, down to that date, if a Western member had introduced a bill to amend the constitution, by annulling the guarantee in favor of slaves, or if an Eastern member had proposed a bill to amend the constitution, by abolishing the protection to lands, by doing away the qualification of voters for the Senate, either would have been charged with a breach of faith, and from which ever side the movement might have come, it would have provoked retaliation on the other.

But, I may be told, that Eastern and Western parties have passed away. Be it so; I shall be the last to attempt to revive strifes, merely sectional. But the great interests of society exist now as they existed in 1835; and although men may be individuated, and act no longer in sectional masses, the question still is of as much interest as ever—is there to be any check upon the Legislature, in the imposition of taxes on property? And if there is, on what species of property? Shall land, the most important of all property, be cast away, and bear such burdens as may be imposed at pleasure or of necessity, while slaves enjoy the exemptions now allowed? Sir, I fear this subject of amending the Constitution has been considered too much with reference merely to equality on days of election. Let us become a people of equal rights and equal privileges, says the Governor, in his message. The problem really to be is solved not one of political equality merely, but of taxable

equality also. And whilst I do not object to all free citizens casting equal votes on days of election, I must insist that along with that change in the Constitution, there shall be security for as near an approach to equality as possible on the days of tax-gathering, and when the sheriff makes his annual round, for the collection of the reveuue that each man shall contribute, according to his several ability, for the support of Government. It has been treated as a question solely between the land holder and non-holder, in regard to equality of votes. It is an equally important question between the landholder and the slaveholder, and white poll in regard to taxation. We must view things as they are. What are the great subjects of taxation in the State, from which revenue is to be derived? Lands, slaves, and white polls. You may derive something handsome from taxes on monies at interest, and stocks in Banks, or other corporations, and a pittance from what is laid on your daughter's piano, your wife's silver spoons, *et cetera*, but your main reliance for revenue is upon the three sources first mentioned. These three interests were all represented in the convention of 1835, were parties to the treaty then made, and are all protected against the unequal burdens under the existing Constitution. The land, by the power of its owner to select the Senator; the white poll, by his power to select the House of Commons, and the slave property, by the guaranty already mentioned. There is, and was designed to be between them mutual checks against inequality of imposition. By this bill you destroy this system; you strike from the landholder his power of defence, while you leave to the slaveholder his impenetrable shield. You set out with the Quixotic idea of establishing equal political rights, and end by creating an unequal and unjust exposure to taxation, a greater mischief and grievance than that you designed to remedy; a natural consequence of undertaking to deal with the complicated subject of the Constitution by piecemeal. Sir, suppose this Senate were sitting as a Con-

vantion, wlth power to make and propose a whole Constitution to the people of the State, (and that is the situation in which we should place ourselves, when we come to devise amendments,) and that we had progressed so far as to establish two branches of the Legislature, and to ordain that the electors for each should be the same—that we had further voted that land should be liable to taxation at the will of the Legislature, without any restraint, and then that some member should propose to restrain the General Assembly from taxing slaves, as provided in the present Constitution, how many votes do you suppose the proposition would receive? Would it not be at once replied, and perhaps with some impatience, "No, we have refused any restraint in regard to land, and it would be unjust, therefore, to provide one as to slaves." And is the injustice any the less, because, both lands and slaves being protected under the present Constitution, you strike out the protection of one and leave that of the other, than if you had a new Constitution to make, you refused protection to lands and inserted it for slaves? Sir, this object has sooner or later to be met on manly and intelligent ground. When you take away the present Constitutional protection to land, there are two alternatives open to your adoption, one of which you will be compelled to take; and these are either to insert a new provision which shall afford the protection you have taken away, unaccompanied by political power, or to strike out all protection to property of every kind, and leave it to be taxed at the pleasure of the Legislature. For, sir, when it shall become known to the people of the State, that you have sent them a Constitution, as you propose to do by this bill, in which no property is protected from taxation except slaves, and that, of these, one half cannot be taxed at all, and the other half only as white polls, you will have produced a war upon the interest of the slaveholder, quite as fierce as that you are now waging against the landholder.—Let no one accuse me of desiring to produce such a contest. The charge would be as unjust as untrue. A slaveholder

myself, to a considerable amount of the estate with which I am endeavoring to provide for a somewhat numerous family, I have every reason to desire security and protection to that species of property. But when we are called on to consider propositions for change in the structure of the Government, it is necessary to analyze society, and see of what elements it is composed, and how they consist together. And as a matter of policy, I do not wish to see slave property enjoy the "bad eminence" of being the sole favorite of the constitution, and subjecting its owners to a public sentiment, which cannot be otherwise than injurious; and as a public servant, charged with the duty of guarding alike all the interests of the State, and to allow to none an advantage above another, I cannot and will not consent to put the landholder without the pale of the protection of the constitution and leave the slaveholder within it. What is the actual condition of these interests now?

The cash value of lands in 1850 was in round numbers $68,000,000.

The slaves, by the census, were numbered but not valued, and amounted to 288,548. Allowing a moderate per centage for increase in four years, they are now 300,000. At an average of $333⅓ per head they are worth $100,000,000. Half the number, those under twelve and over fifty, are exempt from taxation. They are of less value than the other half. Put them down at $40,000,000, and those between these ages at $60,000,000. Now you propose, by this Bill, to say to landed property to the amount of sixty-eight millions of dollars only: you shall be taxed at the will of the Legislature; but to one hundred millions in slaves, you say: forty millions shall pay no taxes at all, and as to the other sixty millions, they shall not pay as land does, according to the one hundred dollars value, but as polls, on which there can be no greater levy than on a free man. As to your revenue, now, how is it derived? Land, and town property, (which is but a species of land,) pay into the

general treasury, exclusive of the Lunatic Asylum tax, $36,000 per annum, while the whole poll tax on 300,000 slaves, and on a white population, whose muster roll bears the names of 80,000 fighting men, and whose votes exceed 95,000, is about $35,000. The treasury accounts do not distinguish the amounts received on the white from the black poll. It is more than a liberal allowance to suppose that the blacks pay $20,000 of this sum. But remember that $20,000 per annum is all you obtain—in the general treasury, I mean—from one hundred millions of dollars worth of slaves, while sixty-eight millions of land pay to the same strong box $36,000. Go from generals to particulars, and the inequality is more striking. One thousand dollars worth of land pays 60 cents. A slave worth $1,000 pays 20 cents. And do you desire to render this inequality still greater, by making the Legislature wholly irresponsible to the landholder, while you retain the exemption and the check for the slaveholder?

Sir, when the State collected but seventy or eighty thousand dollars per year, from all sources, these things were matters of not much importance, and received not much attention. But, although there is no mention of it in the Governor's Message, we have now reached a period of taxation. We must have more money before we leave this Capitol, or the public credit is gone! And when your Financier sits down to examine the statistics of the national wealth, he finds forty millions that he can't touch, sixty millions more that he must touch lightly, because it stands on the footing of men who have votes. Thus, one hundred millions is passed by. When he looks to the land, the next great subject of property, that has now a defence in the votes of its owners. But you propose by your bill to deprive it of this, and allow him full sweep at that which can never hide or get out of the way, and generally comes in as residuary legatee of all taxes that can't find another subject broad enough to bear them.

I repeat, sir, it is a delicate, and, by no means, an agreeable task, thus to review the great interests of the State, and place them in apparent antagonism. But it is necessary that we shall realize what we are about, when an amendment to the Constitution is urged, which is in the nature of an attack on one species of property, and survey the whole field before us. The landholders are not a majority of the people, but they approach much nearer to it than the slaveholders, and when you have triumphed over them, and exposed their land to unlimited taxation, especially when you accompany it with a new tax bill, they will turn upon you and demand a repeal of the protection against taxes on slaves, and will find recruits enough to carry it as by storm. Thus a contest is to be begun, of which no man can tell the end.

Sir, it is to avoid these consequences that I offer the amendment under consideration. Since you propose, as I have shown, to abandon and violate the compromise of 1835, to annihilate the checks and balances then established between conflicting interests, to allow one of these interests an advantage it could never have obtained, but for that which you propose to abolish in another, the earlier and the more calmly you can settle the matter the better. When a compact becomes thus disregarded or misunderstood, and there is a determination to get rid of its terms, it is high time to call together the parties who formed it, and let them agree upon new stipulations. Go to the people with the question, whether they desire a Convention to amend the Constitution; not by mutilating a part, but by a calm consideration of the whole; or if you fear to trust a Convention with the whole, propose a limited Convention, with power to act on certain kindred subjects. If the decision be against it, there is an end of agitation. If for it, then it is proposed that delegates shall be at once elected, who shall assemble at an early day and frame and propose such amendments as may be desired; that these amendments shall

be submitted to the popular vote, and, if ratified, become a part of the Constitution. Thus, before another election for the General Assembly, the whole subject will be disposed of, and at that election, the people, if they will it, can have Free Suffrage, and what it seems they never had before, a restoration to "the fundamental principles of liberty." And permit me to say, that whatever you may do here, I doubt whether they will ever attain it in any other way. It may answer as a very convenient theme on which gentlemen may make up Journals, with which to endeavor to bother each other on the stump, by showing that one man was more or less a friend to the people than another, but as an isolated amendment, in my belief, it will never receive the popular sanction.

Sir, if you call a Convention, the right of suffrage can, and I hope will be, extended. At the same time, I desire that property shall be allowed all proper guarantees against unequal and unjust taxation. Both of these objects can be attained, and have been attained, in other States where the whole constitution was open to revision, and was not dealt with by piecemeal, as you propose to do here. Thus, in the new Constitution of Virginia, where the right of suffrage was extended, there is this provision, namely, &c.:

"Taxation shall be equal and uniform throughout the commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.

"Every slave, who has attained the age of 12 years, shall be assessed with a tax equal to and not exceeding that assessed on land of the value of three hundred dollars.—Slaves under that age shall not be subjected to taxation; and other taxable property may be exempted from taxation by the vote of a majority of the whole number of members elected to each House of the General Assembly.

"A capitation tax equal to the tax assessed on land, of the value of two hundred dollars, shall be levied on every

white male inhabitant, who has attained the age of twenty-one years; but nothing herein contained shall prevent the exemption of taxable polls, in cases of bodily infirmity.

"The General Assembly may levy a tax on income, salaries and licenses, &c., &c., &c.

So in Tennessee and Louisiana, [the constitutions of which Mr. G. here read.]

If you intend to act on this one subject intelligently, justly and fairly, you need a convention to arrange it and its cognate parts of the constitution. But, sir, do you not see that this bill is but the entering wedge into the constitution? From the source of its origin, you are urged further to amend, so as provide for the election of the Judges by the people for short terms, and Justices of the Peace by the people. Why not Treasurer, Comptroller, Secretary of State? When you once begin to change the organic law by acts of Assembly, there will be no end to propositions to change, at least so long as there is anything left to offer to the people in the way of more and more votes. Is it not, therefore, the wiser and more conservative course to go at once to the people, to go at first where in any event you are compelled to go at last, to ascertain if change is desired, and, if so, that they may take the matter into their own hands, and provide to effect it, by delegates elected for that purpose and no other. A large part of the constitution was superseded by the adoption of the Federal Constitution, another considerable portion was annulled by the amendments of 1855, but they are still incorporated with that which is in force. A revision would lop off these, or modify them into compact and intelligible shape, and give us an organic law corresponding with that revision of the Statute Law on which the General Assembly is now engaged. I am aware, that much of the opposition to a Convention arises from an apprehension that the present basis of representation may be lost. In my opinion this is a mistake. I think there is no general disposition to disturb it in the region of

country in which I am best acquainted. And I propose a free convention in which the people of the State (they are a conservative people,) may amend the constitution, so as to adapt it generally to what they believe to be suited to their condition now. But, if it should please a majority to insert a restriction as to the basis of representation, I shall still give to the proposition my support. But I am met in the threshold with the objection, that it is contrary to the constitution to provide for taking the sense of the people, and to allow the call of a convention in the mode I propose.—And the bill on this subject had been scarcely read, until the Senator from Martin rose to protest against it, as violative of the constitution.

Sir, if there be anything, which I have endeavored to understand, it is the frame of Government under which we live; and if there be any thing I would desire to avoid, it is knowingly to violate any of its provisons. This amendment has not been proposed, without an examination of the constitutional question. The objection I shall endeavor to meet fairly. It is not new to me; I met it in the Legislature, in 1834, from the opponents of the convention, which assembled in 1835. When that convention met, very loose ideas prevailed in regard to the authority which called it—whether it was the people or the Legislature, and, *if* the Legislature, whether it could bind the delegates to take the prescribed oath. You will remember, that they were required to swear "not to evade or disregard the duties enjoined, or limits fixed to this convention;" and as, among these duties, was a requirement to strip the counties of political power, which they before had of electing one Senator and two members of the other House, without regard to population or taxation, and fix a certain number of members in each House, and apportion them on the present basis, there was a reluctance among some members to take the oath, and a disposition to act as if clothed with general powers to consider and propose amendments to the consti-

tution. When we learn, as we do from the remarks of the Hon. Jesse Speight, at page 123 of the debates of the convention, that 39 counties gave majorities against calling the convention, and only 26 counties cast majorities in favor of it, although it was carried by a large majority of the people of the State, we see, as it is expressed by Mr. Gaston, in the debates, that a large number of members (there being two members, and only two, for every county,) came to their work "grudgingly"; and with an inclination, if not convinced that such a step was wrong, not to take the oath, but to claim the powers of a general convention. A distinguished gentleman (Mr. Wilson,) from the county of Edgecombe, now no more, opened the discussion by stating his doubts in regard to taking the oath, and the power of the Legislature to impose it; that, (in his opinion,) if taken, it would bind members to make changes in the constitution, of which they might not be in favor, &c. This led to a debate, in which Mr. Gaston stated his views of the nature of the convention, and of the power by which it was called into existence—a man, of whom, permit me to say, now that he has gone down below the horizon, that the light of his luminous mind and pure and elevated character still shines back upon us from the tomb, and, in hours of doubt and difficulty, will long continue to guide us in the paths of safety and truth. He asserted the very theory on which I now proceed; that is: that the Legislature had not called that convention. It had but proposed it to the people. The people had adopted the proposition by their votes, and called the convention themselves, and had prescribed certain duties and limits, and imposed an oath for their observance. Hear his own clear and forcible language:

"The State Legislature had indeed no authority to impose an oath upon the members of the convention, but the people had ratified the act of the Legislature by choosing delegates under it. According to the theory of our government, all political power was derived from the people, and

when they choose to make a grant of power, they might make a plenary or restricted grant, might give it all or in part. The Legislature, by the act, proposed to the people a convention, with the powers, restrictions and limitations set forth in the act. It was, as it came from the Legislature, no more than a proposition or recommendation. It must originate somewhere, and with no body could it have originated with so much propriety as in that which represented the people, for Legislative purposes. The proposition having been sanctioned, it became the act of the people, but it has been sanctioned precisely as it was proposed. Such a convention as is proposed in the act of Assembly, and no other, has been called; and therefore, that act, so sanctioned, must be regarded as our power of Attorney. If we transcend the limits or refuse obedience to the conditions therein provided, we are not the convention called by the people, but a self-constituted body, &c."

This statement of principles, so lucid and just, settled the question that that convention was called by the people, and was restricted by them, and the Legislature had only proposed the convention to the people upon a certain basis, and done nothing more. The convention, with a few dissenting votes, organized and acted accordingly. And in the preamble to t e amended constitution, the convention sets forth that, "whereas the General Assembly had enacted, that polls should be opened to ascertain whether it was the will of the freemen of North Carolina that there should be a convention, to consider of certain amendments proposed to be made to the constitution, and did further direct that if a majority of all the votes polled by the freemen of North Carolina should be in favor of such a convention, the Governor should, by Proclamation, announce the fact, and, thereupon, the freemen aforesaid should elect delegates, &c.: and whereas a *majority of the freemen of North Carolina did by their votes, at the polls so opened, declare their will* that a convention should be had, to consider, &c.; and the Governor did by Proclamation announce the fact that their will had been so declared, and an election of delegates

was accordingly had: Now, therefore, we, the delegates of the good people, &c., submit to the determination of the qualified voters of the State the following amendments, &c." Thus showing that they considered their power derived from the will of the freemen of the State, expressed by their votes at the polls. It is then established beyond controversy, that that was a constitutional and legitimate mode of originating a convention, and that it was then acted upon.

But I am told that it is now prohibited by a clause in the amendments of 1835, in these words: "No Convention of the people shall be called by the General Assembly, unless by the concurrence of two-thirds of all the members of each House of the General Assembly." Let us examine it. It is a prohibition—upon whom? The General Assembly, unless two-thirds concur. Against doing what? Calling a Convention,—exercising their authoritative power to bring into existence a body with power over the Constitution. For it is manifestly intended that if majorities of two-thirds do concur, they may direct a Convention to be elected and assembled, with full power to annul the whole Constitution and substitute another in its stead, without consulting the people at first, or submitting it to them at last. The Legislature evidently has no power to limit a Convention, or to require it to submit its work to the people. Against a Convention with such powers, and such irresponsibility, this provision was intended to guard. But upon that safe and tried method of a *proposition* by the Legislature to the people, and a call by the people themselves, it has no operation. Restraining and disabling provisions upon the power of the people are to be strictly construed. They had the right to call a Convention, and the Legislature had the power to provide them the means for the exercise of that right in 1835, as we have seen. Does a prohibition on the Legislature against calling a Convention itself take away either this right of the people, or the power of the Legislature to provide for its exercise?

I am corroborated in this view by what occurred in the Convention. First, a committee reported a mode of amending the Constitution by what is called the Legislative method. Taking it for granted that that did not exclude the power to resort to Conventions as another means of amending, Mr. Meares, of Sampson, proposed an article "so that no Convention of the people should hereafter be called, except by the concurrent vote of two-thirds of each House of the General Assembly." Deb. Con. 369. Did this pass? If it had, I should have surrendered the question. But Mr. Giles, of Rowan, and others remonstrated; and after debate, Mr. Meares modified "his amendment so as provide that no Convention shall hereafter be called *by the General Assembly*, except by the concurrent vote of two-thirds of each House. Mr. Giles said he was perfectly satisfied, and the amendment in that shape was adopted. Deb. Con. 372, 3. Now what was the difference? The first proposition was general, and prevented the call of a Convention in any way, except by the concurrence of two-thirds of each House, and was tantamount to saying no Convention shall be called, either *by the people or by the General Assembly*, except with the previous concurrence of two-thirds of each House of the General Assembly. Upon remonstrance being made, Mr. Meares modifies, so as to leave out the restraint on the people, and confine the power to call in the General Assembly to a two-thirds vote, leaving to the people the right which they had had, and under which that convention was then sitting. And if the right remained to them, the power and duty of the General Assembly, in a proper case, to provide a remedy, is not taken away, by forbidding it to call a convention, except by two-thirds. For, according to the opposite construction, even two-thirds could not submit the question to the people, of whether they will have a convention, but must themselves call it, or there can be none at all.

Again, we have had three conventions in North Carolina to change the constitution since its original adoption in 1776—one which met at Hillsboro' in July, 1788, with power to deliberate on the Federal Constitution, and to establish a permanent seat of Government. It rejected the Federal Constitution, and fixed the seat of Government near Isaac Hunter's plantation, in Wake county. Another, which met at Fayetteville, in November, 1789, again to consider the Federal Constitution and the expediency of allowing the town of Fayetteville a member of the General Assembly. It adopted the constitution of the United States, and allowed a member to the town of Fayetteville. Both of these conventions were called by the General Assembly—both made changes in the constitution; the last a most important change, by adding North Carolina to the Union of States, and giving a new representative in the Legislature to a borough town, and neither ever submitted its work to the people for ratification. Now, sir, the convention of 1835 is not only presumed to have known, but, from the characters of the men who composed it, it did know, the political history of the State, and their language is to be interpreted with reference to it. They knew that two conventions had been called by the General Assembly of 1788 and 1789, and that that in which they were in 1835 was called by the people. When, therefore, they laid their inhibition upon the General Assembly not to call any more conventions, with power to bind the people, as had been done in 1788–'9, they are not to be understood as applying this inhibition to the right of the people themselves, or to the Legislature against aiding them in its exercise. The narrow maxims derived from the common law—a system designed to prescribe rules of action to individuals, such as that we cannot aid others to do what we are forbidden to do ourselves, have no application to the great departments of government. The Legislature, the most important of these departments, is forbidden to do many things itself, which it is its bounden

duty to provide the means to enable other departments or the people to do. Examples of this are too obvious and abundant to require specification.

Sir, since 1835, the doctrine we are discussing has received much illustration from certain proceedings in the State of Rhode Island. In 1842, a portion of the people of that State undertook to change the constitution, against the wishes of the Legislature, and the other departments of government. They proceeded by public town or county meetings, elected delegates, formed a constitution, professed to have elected a Mr. Dorr under it, and claimed to supersede the officers under the old constitution. Civil war ensued. Dorr was put to rout, as he deserved to be, and took refuge elsewhere. But one of his followers, being arrested by the authorities of the old government, brought a suit for trespass and false imprisonment, on the ground that the Dorr constitution was in force. The State officers justified under the authority of the old constitution, and thus the cause was carried to the Supreme Court of the United States. The report of it is before me. The Court did not consider the question of what constitution was in force; a judicial one, as prescribed by the pleadings for their decision. But Mr. Webster was the counsel of the old government, a Statesman and Jurist, as renowned for the conservatism of his sentiments, as for the depth, the force, and range of his thoughts and information. He argued the whole subject elaborately. And while he justly condemns the unauthorized proceedings of Dorr and his followers, he puts the condemnation upon the ground, that he acted against the authority of the existing government; and everywhere admits by fair implication, that if Dorr's proceedings had had the sanction of the government, an act of the Legislature, for example, providing for the determination of the question of convention, and the choice of delegates, they would have been legitimate and constitutional.

Sir, before taking leave of this argument, let me direct your attention again to a constitutional reservation of power

to the people, which should not be overlooked in the consideration of this question. In the Bill of Rights, which is part of the same constitution which contains the inhibition I have quoted at length, there is this declaration: "That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof." This secures a right. But how shall it be exercised? The people cannot proceed in its exercise by making changes in the regulations of government, without the approbation of the existing government. This would be to commit the mistake of Dorr. But if such is their right, is it not within the power of the Legislature, and is it not its duty, when an emergency has arisen requiring its exercise, to provide the means for that exercise? If not, then they have an abstract right, but there is no means of asserting it in practice.

I trust that the authority of the Legislature to adopt the provisions of this amendment, and the right of the people to call a convention, are now vindicated. It presents by far the most just, fair, and conservative mode of constitutional amendment. Fears I know are entertained from the action of mere majorities of the Legislature. But those who express them forget that there is still another ordeal to undergo before the constitution can be touched, whose wisdom, moderation and conservatism, I think, they undervalue; and that is the vote of a majority of the people. Those of this State have not been very prone to change. If they believe the occasion not sufficient, they will vote against convention. If they determine for it, they will take such security in the election of delegates, who are to be selected, you will observe, by federal population, exactly as the members of the present House of Commens, as to prevent great harm; or, if disappointed in this, they will reject their work at the polls. In either case, we shall have an end of agitation about the organic law, and the State will advance in her new career of improvement, I trust, with redoubled steps.